

FILED
07 OCT -5 PM 1:13
RICHARD W. VIERKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
5/5

1 Name Nicholas Bartellis
2 Prison number K-116024
3 address P.O. Box 7500
4 Crescent City, California
5 95532 % Pelican Bay state Prison

(PR)
SBA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 Nicholas Bart Ellis
11 PLAINTIFF

C 07 5126
CASE NO.

12 Sergeant A. Navarro
13 Correctional officer F. Juarez
14 Correctional officer B. Gardner
15 APPEALS Coordinator C.E. Wilber
16 Defendants

COMPLAINT under the CIVIL
RIGHTS ACT.
TITLE 42, U.S.C § 1983
(Demand For Jury Trial)

INTRODUCTION

19 1. Plaintiff, Nicholas Bart Ellis is a state Prisoner appearing in
20 Pro-se with this Civil Rights complaint, pursuant to 42, U.S.C
21 Section 1983 based on the defendants, using excessive force on
22 Plaintiff causing him serious harm, bodily injuries and the
23 administrative appeals coordinator purposely obstructing Plaintiff
24 from exercising his constitutional right to file complaint.
25
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2. Jurisdiction

This court has Jurisdiction to review the claims raised herein, pursuant to 42 U.S.C. Section 1983 and 1983.

3. Exhaustion of Administrative Remedies.

A. Place of confinement Pelican Bay State Prison

B. Is there a grievance procedure in this institution Yes

C. Did you present your facts in your complaint for review through the grievance procedure. Yes

D. If your answer is yes, list the appeal number and date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal level. 3084.5 Levels of Review and Disposition (A)(3) (4). waived.

2. First formal level. Denied. Appeals coordinator's refusal to process appeal, on November 8 2006. February of 2007 (supporting documents attached).

3. Second formal level. Denied. Institutional heads, refusal to process, respond to appeal submitted November 21, 2006 (resubmittal of appeal within the month(s) of January of 2007 and February of 2007. APRIL of 2007. (supporting documents attached)

4. Third formal level. Denied. chief inmate of appeals, refusal to process appeal forwarded by institutional staff to them on, October 27, 2006. (supporting documents attached).

E. Is the last level to which you appealed the highest level of appeal available to you? Yes

1 F. If you did not present your claim for review
2 through the grievance procedure explain why. _____
3 _____
4

5 4. Parties.

6 A. Write your name address Do the same for additional
7 Plaintiffs, if any.

8 Nicholas Bart Ellis is the Plaintiff at all times mentioned
9 in this complaint. who was/is a state Prisoner housed at
10 Pelican Bay State Prison, P.O. Box 7500, Crescent City, California
11 95532. Administrative Segregation E-5
12

13 B. Write the full name of each defendant, his or her official
14 position and his or her place of employment.

15 A. Navarro, is a defendant, who is a sergeant at Pelican
16 Bay State Prison, at all times mentioned in this complaint.

17 F. Juarez, is a defendant, who is a correctional officer at
18 Pelican Bay State Prison at all times mentioned in this complaint.

19 B. Gardner is a defendant, who is a correctional officer at
20 Pelican Bay State Prison at all times mentioned in this complaint.

21 C.E. Wilber is a defendant who is a correctional
22 Administrative appeals coordinator at all times mentioned in
23 this complaint

24 At all times mentioned herein the defendants were operating
25 under the color of law and are being sued in their individual
26 and official capacity.
27
28

1 5. statement of claim.

2 state here as briefly as possible the facts of your case. Be sure to
3 describe how each defendant is involved and to include dates.
4 when possible. Do not give any legal argument's or cite any cases or
5 statutes. If you have more than one claim, each claim should be set
6 forth in a separate numbered paragraph.

7
8 6. On August 14 2006, Plaintiff had a physical altercation.
9 Provoked by C/o J. Williams, while Plaintiff was in the process
10 of being escorted to the B-facility clinic at Pelican Bay State Prison.
11 During the altercation Plaintiff was sprayed with "Oleoresin Capsicum
12 (MK-9) a chemical agent used by Prison officials to manage Prisoners
13 during an altercation.

14
15 7. Plaintiff was restrained by correctional staff who responded to
16 the incident and received medical attention after being decontaminated.
17 (cleansed) do to being sprayed with "Oleoresin Capsicum". Plaintiff was
18 examined for possible injuries and treated by B. Fellows
19 (Correctional Medical staff).

20
21 8. Plaintiff was then in the process of being escorted to the
22 administrative segregation unit (ad-seg) by defendants, Correctional
23 Sergeant A. Navarro, Correctional officer F. Juarez and Correctional
24 officer B. Gardner, when Plaintiff was assaulted by said
25 defendants in retaliation for the physical altercation Plaintiff
26 had with Correctional officer J. Williams moments earlier.

27
28 9. While Plaintiff was hand-cuffed in mechanical restraints

1 and shackled with leg restraints, he was escorted by
 2 defendants: A. Navarro, F. Juarez and B. Gardner to a secluded
 3 area of the Prison, between the B-facility and administrative
 4 segregation housing units. At which time defendant F. Juarez
 5 punched Plaintiff in the face a few times, when defendant B. Gardner
 6 grabbed Plaintiff's hair while kicking Plaintiff's legs from under
 7 him, causing Plaintiff to land on his face on the concrete asphalt
 8 roadway, while defendant A. Navarro held plaintiff on the
 9 ground and punched him a few times in the back.

10
 11 10. Defendant F. Juarez then began to repeatedly slam his knee
 12 into the left side of Plaintiff's face, while grabbing the Plaintiff's
 13 hair and then proceeded slamming Plaintiff's head into the concrete
 14 asphalt by pulling plaintiff's hair and repeatedly slamming
 15 his face on the asphalt, while defendant's B. Gardner and Sergeant
 16 A. Navarro punched plaintiff, while commenting "this is what
 17 happens when you mess with us."

18
 19 11. After Plaintiff was assaulted by the defendants he was
 20 semi-unconscious and was later transferred to "Sutter Coast
 21 Hospital" (outside facility) for a medical evaluation and treatment,
 22 by being referred for said treatment by correctional
 23 medical staff R. Nelson.

24
 25 12. As a result of the defendants assault on Plaintiff,
 26 Plaintiff received the following injuries: 1) A skull fracture, lower
 27 left eye orbit; 2) A broken nose; 3) Swelling extremities to the
 28 left eyeball, forehead, cheek, nose, lips, ear and four (4)

1 Areas of lacerations to the right side of the facial areas
 2 forehead, frontal and side areas, which are supported by
 3 Sutter coast Hospital medical records, X-rays and Prison
 4 institutional medical records and treatments.
 5

6 13. Plaintiff filed an administrative appeal concerning
 7 the facts set forth in this Complaint, when he was able to
 8 ; due to serious head trauma and lapse of memory. But
 9 defendant C.E. Wilber has obstructed Plaintiff's from
 10 exhausting his administrative remedies in the attempt to
 11 protect prison officials (the defendants) from being sued in
 12 the court of law, thus violating Plaintiff's first
 13 Amendment Rights to the U.S. Constitution.
 14

15 14. Plaintiff has presented his administrative appeal to all
 16 levels of review to be appropriately addressed, investigated
 17 and adjudicated. But prison officials refuse to process
 18 said appeal, thus, I have no other remedies available
 19 except by way of this civil complaint.
 20
 21

22 I

23 First Cause of Action.

24 Plaintiff realleges and incorporates by reference the
 25 allegations in paragraph 5 Through 12 that the defendants
 26 violated plaintiff's constitutional Rights under the EIGHTH
 27 and Fourteenth Amendment to the U.S. Constitution by using
 28 excessive force on plaintiff with any justifiable reason that served

a legitimate penalogical interest.

II

Second Cause of Action

Plaintiff realleges and incorporate by reference the allegations in paragraphs 13 and 14 that defendant C.E. Wilber violated plaintiffs constitutional Rights under the First Amendment by obstructing Plaintiffs right to file a complaint (administrative appeal) to exhaust his administrative remedies.

III

Prayer for Relief

wherefore, based on the facts of this complaint plaintiff respectfully prays for this honorable court to grant plaintiff the following relief:

1. Punitive damages against the defendants in the amount of one-million dollars;
2. Compensatory damages against the defendants according to proof presented by plaintiff;
3. Special damages against the defendants;
4. Award reasonable attorney fees if plaintiff is represented by counsel;
5. Grant any other such relief that the Court deems appropriate.

1
2 Plaintiff declares under the penalty of perjury
3 that the facts herein are true and correct.

4 Signed 17th day of September, 2007
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8 Helela Part Cille
9 (Plaintiff's Signature)
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INMATE/PAROLEE APPEALS SCREENING FORM

Name: ELLIS Number: _____ Housing: ASUC-4

YOUR APPEAL IS BEING REJECTED/CANCELLED AND RETURNED FOR THE FOLLOWING:

Screening Appeals Rejection Criteria:

- ☐ 1. The resolution is not within CDC's jurisdiction. See CCR, Title 15, Sections 3084.2(e) and 3084.3(c)(1).
- ☐ 2. The appeal duplicates the inmates previous appeal. See CCR, Title 15, Section 3084.3(c)(2).
☐ (a) Your appeal has been screened out on _____ for _____
☐ (b) Your appeal is being reviewed at the _____ Level, Log # _____
☐ (c) Your appeal has been completed at the _____ Level, Log # _____
- ☐ 3. The appeal concerns an anticipated action or decision. See CCR, Title 15, Section 3084.3(c)(3).
- ☒ 6. The appeal exceeds the 15 working days time limit, and the inmate has failed to offer a credible explanation as to why he could/did not submit the appeal within the time limit. See CCR, Title 15, Sections 3084.2(c), 3084.3(c)(6), and 3084.6(c).
- ☐ 8. Abuse of the Appeal Process/Right to Appeal.
☐ (a) Excessive filings. Submission of more than one non-emergency appeal within a seven-calendar-day period is excessive. See CCR, Title 15, Section 3084.4(a).
☐ (b) Inappropriate statements. The Appeal contains false information, profanity, or obscene language. The appeal is rejected. See CCR, Title 15, Section 3084.4(b).
☐ (c) Excessive verbiage. Appeal cannot be understood or is obscured by pointless verbiage or voluminous, unrelated documentation. See CCR, Title 15, Section 3084.4(c).
☐ (1) Only allowed 1 added page, front and back, to describe the problem and action requested in Sections A and B, per CCR, Title 15, Section 3084.2(a)(1).
☐ (2) Only supporting documentation necessary to clarify appeal shall be attached to the appeal, per CCR, Title 15, Section 3084.2(a)(2).
☐ (d) Lack of cooperation. Appellant refused to cooperate and/or interview with the reviewer which has resulted in cancellation of the appeal, per CCR, Title 15, Section 3084.4(d).
☐ (1) Your appeal was screened out and returned to you with instructions:
☐ ☐ ☐
☐ (e) Failed to reasonably demonstrate the decision, action, policy, or condition as having an adverse affect upon the inmate's welfare, per CCR, Title 15, Section 3084.1(a).
☐ (f) This is a request for information. It is not an appeal. Write a note (GA-22, Request For Interview form or CDC-7362, Medical Request form).
- ☐ 9. Cannot appeal on behalf of another inmate/person. See CCR, Title 15, Sections 3084.2(d) and 3084.3(c)(7).
- ☐ 10. Issue resolved at previous level of Appeal review. See CCR, Title 15, Sections 3084.3(c)(8) and 3084.4(d).

Comments: PER AB 05-03, THIS APPEAL WOULD BE PROCESSED AS A STAFF COMPLAINT ONLY. IF YOU WANT TO APPEAL YOUR IIS, FILE ON SEPARATE APPEAL. A FACT FINDER INVESTIGATION HAS ALREADY BEEN CONDUCTED ON YOUR ALLEGATIONS. TIME CONSTRAINTS

C. Wilber
C. E. WILBER
Appeals Coordinator

NOV 08 2006
Date

EXCEEDED ON STAFF COMPLAINT APPEAL. RE-SUBMIT IIS APPEAL WITH FINAL COPY OF IIS

This screening decision may not be appealed unless you can support an argument that the above is inaccurate. In such a case, please return this form to the Appeals Office with the necessary supporting information.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

NOV 06 2006

PBSP

(Rev. 11/06)

CCR 3084.3(d)

PBSP

STATE OF CALIFORNIA
GA-22 (9/92)

INMATE REQUEST FOR INTERVIEW

DEPARTMENT OF CORRECTIONS

DATE 4/12/07	TO WARDEN HORNE TO: Ellis	CDC NUMBER K-16024	
HOUSING ASU C-4	BED NUMBER C-4	WORK ASSIGNMENT	JOB NUMBER FROM TO
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)			ASSIGNMENT HOURS FROM TO

Clearly state your reason for requesting this interview.

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

Request for acknowledgement of receiving and current status of excessive use of force "602" which is over due.

Thank You!

Do NOT write below this line. If more space is required, write on back.

INTERVIEWED BY

C. WEUBER, AC

DATE

DISPOSITION

YOUR ALLEGATIONS OF EXCESSIVE FORCE ARE BEING ADDRESSED INDEPENDANT OF APPEALS PROCESS. THE APPEAL PORTION WAS REJECTED BASED ON TIME CONSTRAINTS.

STATE OF CALIFORNIA
GA 22 (9/92)

INMATE REQUEST FOR INTERVIEW

DEPARTMENT OF CORRECTIONS

DATE 4/9/07	TO WARDEN FLOREZ TO: ELLIS	FROM (LAST NAME)	CDC NUMBER K-16024
HOUSING Ad-Seg	BED NUMBER C4	WORK ASSIGNMENT ASU 4L	JOB NUMBER FROM TO
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)			ASSIGNMENT HOURS FROM TO

Clearly state your reason for requesting this interview.

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

Request for Confirmation, and status of "Excessive and unnecessary use of force, unnecessary undue hinderance of access to courts, 602's. AS normal response period is over due! Thank You.

Do NOT write below this line. If more space is required, write on back.

INTERVIEWED BY

C. WILBER, AC

DATE

DISPOSITION

① ONE MIS-USE OF FORCE COMPLAINT SCREENED OUT ON 11-8-06 DUE TO TIME CONSTRAINTS (INQUIRY ALREADY DONE SEPARATE FROM APPEAL)

JAN 19 2007

January 14, 2006

Greeting's office of internal affairs

My name is Nicholas Bart Ellis #K-116024. I am a state prisoner at Pelican Bay State Prison.

I am contacting you do to the unjustified beating of my personal being on August 14, 2006, while restrained in mechanical leg shackles and handcuffs "behind my back". By a correctional Sergeant and two officer's.

I've maid attempt's verbally and through grievance's to correct this violation of my rights and due process of law. But have been muted by administrative staff's failure to file and process my grievance's in these matter's. To full fill the normal exhaustion requirement.

This leaves me to contact you in hope's that you'll investigate my own as well as other request of this kind in hope's of preventing the next inmate from falling victim to these unnecessary and excessive use's of force being used and administered by correctional officer's and allowed to continue to occur by Supervisory official's at these facility.

Any form of assistance in bringing to light this injustice against me and other's is accepted appreciatively greatly and openly. In protecting the rights and law's of inmates and Civilian's. Thank you.

continued pg 2.

pg. 2

A copie for documentation is requested if possible and available, for further procedueral purpose's. Thank you, again.

Sincerely, Nicholas Bant Ellis #16024

Nicholas Bant Ellis #16024

N.A.S.U C-4 Ad-seq.

P.O. Box 7500

Crescent City, CA

-95532-

OFFICE OF THE OMBUDSMAN

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



January 22, 2007

Nicholas Ellis, K16024
Pelican Bay State Prison
P. O. Box 7500 ASU C4L
Crescent City, CA 95532

Dear Mr. Ellis,

This is in response to your letter dated January 14, 2007 alleging you were assaulted on August 14, 2006 by three correctional staff at Pelican Bay State Prison. You wrote you "attempted through the 602 and verbal method to receive and rectify some form of justice" which have proven futile. You requested an investigation.

California Code of Regulations (CCR), Title 15, Article 8, Section 3084.1 (a) affords you the right to appeal any departmental decision, action, condition or policy that you can demonstrate as having an adverse effect upon you welfare. CCR, Section 3084.2 explains you are to use a CDC Form 602 (rev. 12-87), Inmate/Parolee Appeal Form, to describe the problem, action requested, and forward it to the appeals coordinator. There are four levels of appeals as indicated in CCR Section 3084.5 Levels of Appeal Review and Disposition. Appeal time limits, which are in working days, are indicated in CCR, Section 3084.6.

I have spoken with the staff at Pelican Bay State Prison (PBSP). You sent either a letter or an appeal directly to Internal Affairs (IA) on or about August 26, 2006. The letter was returned to you October 27, 2006 with instructions to submit to the Appeal Coordinator. The Appeal Coordinator received your appeal on November 6, 2006 and it was screened out due to time constraints on November 8, 2006.

On August 14, 2006, you used foul language toward staff, were less than cooperative and refused to participate in a video interview regarding the allegation.

I want to inform you that the Ombudsman does not investigate complaints. Instead, the Ombudsman works with the Institution to ensure complaints are brought forth, investigated and concluded with an appropriate disposition. Staff at PBSP is responsible to ensure appropriate allegations of employee misconduct are investigated at the proper level. There was a fact finding regarding incident log PBP B05-0608 0324 for August 14, 2006. The investigation results included that no further action is required.

Mr. Ellis, you attempted to circumvent the appropriate process, filing an appeal, by sending a letter to IA and this caused you to miss the time frame in which to file an appeal. PBSP has conducted a through fact finding, investigation, and no further action is required at this time.

This is not meant to prohibit or discourage you from taking any other action you feel appropriate on this matter. This letter does not extend your window to appeal the matter described in your letter.

Sincerely,

A handwritten signature in cursive script that reads "Ralyn Conner".

RALYN CONNER
Ombudsman

cc: file

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



October 27, 2006

ELLIS, CDC #K-16024
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

Re:

Dear Mr. ELLIS:

The enclosed documents are being returned to you for the following reasons:

This office provides the Director's Level Review of inmate/parolee appeals. The form must be completed through the Second Level of Review on behalf of the Warden or Parole Region Administrator. This appeal issue should be submitted directly to the Appeals Coordinator for review and appropriate action.

Your assigned counselor, the Appeals Coordinator, or your Parole Agent can answer any questions you may have regarding the appeals process. Library staff can help you obtain any addresses you need.

A handwritten signature in black ink, appearing to be "N. Grannis".

N. GRANNIS, Chief
Inmate Appeals Branch

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE
APPEAL FORM

CDC 802 (12/87)

PBSP

Location: Institution: PBSP

Log No.

Category

1.

1.

2.

2.

7/5
ALLEGATIONS OF
EXCESSIVE FORCE

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Nicholas Bart Ellis	K-16024	U/A	ASU C-4

A. Describe Problem: On August 14, 2006 I was involved in an altercation with staff on facility B-yard, housing B-5 215. After medical clearance to be housed in ad-seq. I was escorted by officer's F. Suarez, Gaddoery Sgt. A. NAVARRO to an isolated area between B-facility and ad-seq. I was then grabbed by the hair, back of my head by one of the officer's, slammed face first into the asphalt, at which point one officer straddled my legs locking my body to the ground and began getting punches. Knead to the left side of my face and had my head slammed into the asphalt, my face right side was then smeared up-down, side to side by the hair, while staff made false statements of me resisting. I was in shackles and handcuffed behind my back.

If you need more space, attach one additional sheet.

B. Action Requested: Punitive damages for pain and suffering, charges brought against these staff for assault and battery and 115's dropped. log no Bole-06-20058

Inmate/Parolee Signature: Nicholas Bart Ellis

Date Submitted: 8/28/06

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: BY-PASS

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: Nicholas Bart Ellis

Date Submitted: Nov 4, 06

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

NOV 06 2006

TO CDW

34



First Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____

Staff Signature: _____ Title: _____ Date Completed: _____
 Division Head Approved: _____
 Signature: _____ Title: _____ Returned _____
 Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Second Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____ Due Date: _____

☐ See Attached Letter

Signature: _____ Date Completed: _____

Warden/Superintendent Signature: _____ Date Returned to Inmate: _____

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to: Director of Corrections
 P.O. Box 942883
 Sacramento, CA 94283-0001
 Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____
☐ See Attached Letter

p92

6002.

dated 8/28/06

This was A clear act of retaliation on be half of staff. fracturing my left eye orbit, braking my nose and the lose of a good deal of blood which photo's were never taken of. This is a clear assault by these staff members and an act of retaliatory measures, do to my previous incident eariler that day with staff. charges of falsify documents, 115 log no B06-08-0055
Hospital records for Sutter Coast can be obtained for proof of damages.

additional pgs 3, 115 B06-08-0055, two "2" CDC 7219 Medical Report of Injury or unusual occurrence.

one other note of record, A transport vehelial ride to ad-seq was denied to transfer me between facility's. as well as A use of force video was denied intell A week later. Dated copy attached.

These were acts of unnecessary, excessive force for the purpose of maliciously causing harm. AS I was in a defenseless state of being, handcuffed behind my back shackled and suffering the effects of sightlessness, burning and coughing fits, caused by 0/c capsicum spray.

Request for copies of all documents, pgs attached for records. Thank you!

Before the assault pg 7.

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

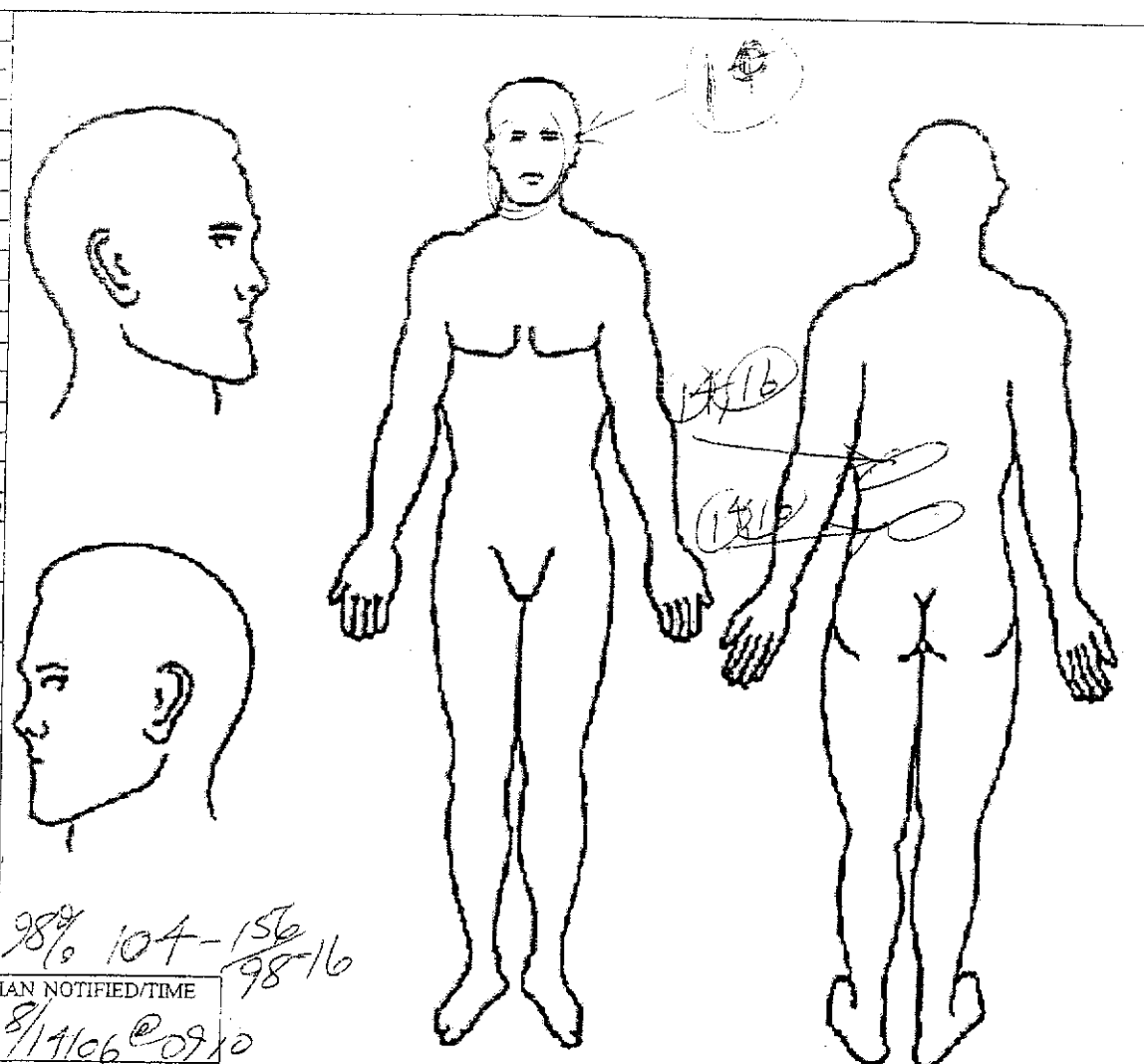
MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE

NAME OF INSTITUTION PBSF	FACILITY/UNIT B Clinic	REASON FOR REPORT (circle) USE OF FORCE	INJURY UNUSUAL OCCURRENCE	ON THE JOB INJURY PRE AD/SEG ADMISSION	DATE 8/14/06
THIS SECTION FOR INMATE ONLY	NAME LAST ELLIS, WITCHOLAS	FIRST WITCHOLAS	CDC NUMBER K16024	HOUSING LOC. B5-217	NEW HOUSING LOC.
THIS SECTION FOR STAFF ONLY	NAME LAST W/A	FIRST W/A	BADGE #	RANK/CLASS	ASSIGNMENT/RDOs
THIS SECTION FOR VISITOR ONLY	NAME LAST W/A	FIRST W/A	MIDDLE	DOB 11/11	OCCUPATION
	HOME ADDRESS	CITY	STATE	ZIP	HOME PHONE
PLACE OF OCCURRENCE B5 ROTUNDA	DATE/TIME OF OCCURRENCE 8/14/06 0850	NAME OF WITNESS(ES) B5 staff			
TIME NOTIFIED 0900	TIME SEEN 0910	ESCORTED BY C.O.'s	MODE OF ARRIVAL (circle) AMBULATORY	LITTER ON SITE	WHEELCHAIR
				AGE 27	RACE W
					SEX M

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

No Comment

INJURIES FOUND? (YES/NO)	
Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
O.C. Spray Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Swollen Area	16
Other	17
	18
	19
O.C. SPRAY EXPOSURE? (YES/NO)	YES/NO
DECONTAMINATED? (YES/NO)	YES/NO
Self-decontamination instructions given?	YES/NO
Refused decontamination?	YES/NO
Q 15 min. checks	N/A
Staff issued exposure packet?	YES/NO

98% 104-156
98-16RN NOTIFIED/TIME
8/14/06 @ 0910 - 8/14/06 @ 0910TIME/DISPOSITION
**C/Far for Ad Seg
RTC**

REPORT COMPLETED BY/TITLE (PRINT AND SIGN)

B. FELLARS RN/B. Fellars

BADGE #

RDOs

52, S

DEPARTMENT OF CORRECTIONS

Declaration of Nicholas Bart Ellis
in Support of
Civil Rights Complaint.

I Nicholas Bart Ellis being duly sworn deposes and says:

1. I am the plaintiff in the attached civil Rights complaint being filed against officials "Sgt. A. Navarro, % F. Juarez and % B. Gardner, at Pelican Bay State Prison, for excessive use of force.

2. On August 14, 2006, I was physically assaulted by three Prison guards which required for me to be treated by an outside physician at Sutter Coast Hospital in Crescent City California.

3. I later filed a CDC 602 Inmate/Parolee Appeal form CDC 602 concerning the excessive use of force (Assault and Battery) used against me (see attached CDC 602 form) (As Exhibit A). The appeals coordinator C.E. Wilber who is also a defendant in the attached civil complaint, refused to process my appeal at the First level of review, Division Head or Warden/Superintendent second level of review required, for allegations of peace officer misconduct, by them personally, was refused processing as well. The appeal was sent directly to third level of review, Chief inmate appeals, by way of self addressed envelope, attached to appeal, should it be denied at second level, sent to C.E. Wilber for processing from the Prison infirmary, on August 28, 2006.

4. On November 2, 2006, I received a response from the

1 Chief Inmate appeals, N. Grannis. That my 602 was
 2 forwarded to him, and I must first have it reviewed, by
 3 the warden/Parole administrator at the second level. To
 4 submit my appeal to appeals coordinator C.E. Wilber for
 5 review and appropriate action.

6
 7 5. On November 4, 2006, I resubmitted the 602 appeal to
 8 C.E. Wilber, with the Chief Inmate Appeals letter statement.
 9 C.E. Wilber, who is a defendant in the attached civil complaint
 10 refused to process my appeal in the attempt to obstruct
 11 me from exhausting my administrative remedies, by claiming
 12 that the time constraints bar me from having my appeal
 13 appropriately addressed, an failure to explain his receiving
 14 the appeal within (15) days of the incident.
 15

16 6. Since the third level of review, highest level in the
 17 completing exhaustion of administrative remedies, has denied
 18 responding to the appeal 602, until second level of review
 19 by institutional head/Parole administrator, who I've afforded
 20 numerous opportunity's. (See attached 602, request for interviews) to
 21 properly, grant's or denies the appeal, 602. I've been instead
 22 met with unprofessionalism and further infringement of my
 23 rights to appeal, by C.E. Wilber's attempt to stonewall my
 24 institutional complaints, which extend to my accessibility of
 25 my federal complaints, of my rights being violated. In
 26 attempts to protect co-worker's and institution internal
 27 investigation and liability; law suits.
 28

Declaration of Plaintiff

1 7. I filed an informal complaint with the office
2 of the ombudsman "Seeking Administrative Relief. (see my informal
3 complaint dated January 14, 2006 as Exhibit-B). The office
4 of the ombudsman responded on January 22, 2006 to my
5 Complaint which is attached to Exhibit-B.
6

7 8. I have attempted through all available means
8 possible to exhaust my administrative remedies within the
9 California Department of Corrections and Rehabilitation. and it is
10 not through fault of my own that prison officials refuse
11 to appropriately address my administrative appeal. Thus
12 their response to not address my claim constitutes as
13 an exhaustion.
14

15 9. I have no other remedy left available except
16 to submit my attached Civil Rights complaint, which
17 the Appeals Coordinator C.E. Wilber is listed as a
18 defendant for violating my first Amendment Rights to the
19 United States Constitution by infringing upon my right
20 to appeal.
21

22 10. It is my belief that the Appeals Coordinator, C.E. Wilber
23 at Pelican Bay has a Practicing Policy of infringing upon
24 inmates Constitutional Right to file and exhaust administrative
25 Appeals against correctional officials which hold merit.
26
27
28

"Declaration of Plaintiff"

1 I declare under the penalty of perjury
2 under the laws of the United States that the
3 foregoing is true and correct.
4

5 Executed this 17th day of September, 2007
6
7

8 Nicholas Bart Ellis
9 (Signature)
10 Declarant,
11 Nicholas Bart Ellis
12
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28

Proof of Service

I am a resident in the County of Del Norte California. I am over the age of 18 years old and a party to the within Cause of Action. My address is P.O. Box 7500 Crescent City, California, 95532, c/o Pelican Bay State Prison.

On September, 17, 2007, I served the within Complaint by a Prisoner under the Civil Rights Act, 42 U.S.C. §§ 1983

by placing the original and two (2) copies in a sealed envelope addressed as follows:

Clerk, U.S. District Court
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, California 94102

I declare under penalty of perjury that the foregoing foregoing is true and correct. Executed at Crescent City, California. On September 17, 2007

Nicholas Bart Ellis
(Printed Name)

Nicholas Bart Ellis
(Signature)

Proof of Service

I am a resident in the County of Del Norte California. I am over the age of 18 years old and a party to the within Cause of Action. My address is P.O. Box 7500 Crescent City, California, 95532. % Pelican Bay State Prison.

On September, 17, 2007, I served the within: Complaint by a Prisoner under the Civil Rights Act, 42 U.S.C. §§ 1983

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San Francisco, California 94102

I declare under penalty of perjury that the following, foregoing is true and correct. Executed at Crescent City, California. On September, 17, 2007

Nicholas Bart Ellis
(Printed Name)

Nicholas Bart Ellis
(Signature)

NAME: Nicholas R. Ellis

CDC NO: K-16024 HOUSING: AD 566 E-5

PELICAN BAY STATE PRISON
P.O. BOX 7500
CRESCENT CITY, CA 95532

RECEIVED

OCT - 3 2007

RICHARD W. WILKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Pro

E

CLERK U.S. District Court

450 Golden Gate Avenue

P.O. Box 36060

San Francisco, California 94102.

PELICAN BAY STATE PRISON
5905 Lake Earl Dr
Crescent City CA 95532



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